IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5176 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDRAVADAN KANTILAL JOSHI

Versus

TRANSPORT MANAGER

Appearance:

MR CB DASTOOR for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/06/2001

ORAL JUDGEMENT

#. The petitioner is serving on the post of driver in the Ahmedabad Municipal Transport Service ("AMTS" for short). He was initially appointed in the year 1981 and subsequently he was confirmed on the said post. The

petitioner as a driver in the AMTS has to drive the heavy vehicle - bus. Unfortunately, he suffered heart ailment and as per the averments in the petition, he received two severe heart attacks for which he was admitted in the L.G.Hospital which is the hospital run by the Corporation. The certificate about the ailment has been annexed at Annexure-A to the petition. In the certificate at page 9, it is stated that the petitioner is advised for light duty. The petitioner thereafter made a representation to the authority which is at Annexure-B - page 10 requesting the authority that since he is suffering from heart ailment and since he is also producing the certificate from the L.G.Hospital his leave may be sanctioned. The petitioner has also annexed his representation at Annexure-C which was made to the authority wherein he has stated that on 1.4.2000 he was given the table work, but thereafter from 4.4.2000 that order was cancelled by the department. He stated that he has categorically brought the said fact to the notice of his superior.

#. The petitioner thereafter filed this petition for a direction to the authority to give him three months' salary and to sanction his leave as well as to provide him light work. During the pendency of the petition, the petitioner also made a representation to the authority by letter dated 8.9.2000 that he may be given some light work. As per the endorsement on the said letter the authority has received the same on the same day. The aforesaid representation is produced by Mr.Dastoor on record.

#. In affidavit-in-reply it has been stated by the Corporation in para 4 that the petitioner is never restrained from performing his duty as a Driver. It is stated that there is no provision for providing light work on the ground of physical disability or on any other health ground. It is also stated that in other cadres, the strength is limited. No benefit of light job can be given to the petitioner even on the ground of physical disability. It is also stated that there is no vacancy of Peon, Helper, Sweeper etc.

#. It is required to be noted that the petitioner was entrusted with the work of driving the municipal bus which is a heavy vehicle. It is not in dispute that the petitioner is suffering from heart ailment. It is difficult to appreciate the insistence on the part of the department that the petitioner must continue to drive heavy vehicle. Because of the sickness of the petitioner if any accident occurs, ultimate sufferers will be the

passengers who are travelling in the bus. If it is brought to the notice of the authority that the petitioner is suffering from heart ailment, insistence on the part of the authority asking the petitioner to continue to ply the bus is absolutely devoid of any rationality. Considering the duty which the petitioner was performing, it is in the interest of the administration to provide him another work except to allow him to continue to ply the bus. It seems that there is total nonapplication of mind on the part of the concerned officer. There are certain posts like the driver etc. where physical fitness is absolutely necessary. In the instant case the department wants to by-pass the said requirement by taking such rigid and unpragmatic view. If because of the continuous service if an employee suffers physical ailment, as a model employer it is the duty of the respondents to provide him with alternative light work. It is stated by the petitioner that he is ready to even work on any of the posts like peon, helper, telephone operator or even wireless operator. It is submitted that even for the driver, a table work is permissible. There is no reason as to why atleast the table work should not be provided.

#. Mr.Dastoor, learned advocate for the petitioner has placed on record the names of the employees wherein those employees have been allowed to do DI Starter work i.e. table work for maintaining register etc. Of course the copy of the same is not given to the other side. Therefore, I am not dealing with this aspect in detail. However the point is that the petitioner is suffering from serious heart ailment and therefore insistence on the part of the department that the petitioner should continue to serve as a driver is absolutely unjustified. Such insistence is not even in the public interest as ultimately if any accident occurs, innocent people may suffer. The respondent authority therefore has taken such issue in very casual manner. When an employee suffers from the ailment while in service, it is the duty of the employer to provide him alternative employment.

#. Under these circumstances, in my view, the petitioner is required to be offered light work like table work or any other work where he is not supposed to do driving.

#. Mr.Dastoor has relied upon the judgment of the Apex Court reported in AIR 1995 SC 519 in the case of Narendra Kumar Chandla Vs. State of Haryana. In the aforesaid case one arm of an employee was amputated due to Sarcoma (Cancer) and he was unable to perform the duties of the post which he was holding. He was thereafter transferred

to lower payscale. The Supreme Court held that such action was not proper and that every endeavour must be made to adjust the employee in a post where he could suitably discharge his duties protecting his last drawn salary. Mr.Dastoor has also relied upon the judgment reported in (1991)1 SCC 731 in the case of Anand Bihari Vs. Rajasthan State Road Transport Corporation, Jaipur. In the said judgment the Honourable Supreme Court has considered in detail about the sickness of an employee and necessary directions to absorb him were granted.

#. In the instant case, considering the facts and circumstances of the case, I am of the opinion that the respondents should be directed to absorb the petitioner on any other alternative post protecting his last drawn pay and the petitioner may be given any other light work or office work without insisting for taking the work of driver from him. The respondents are directed to take appropriate decision in this behalf as per the observations made hereinabove within 15 days from the date of the receipt of the writ of this Court. If any salary of the petitioner is not paid on the ground of his medical leave, the Corporation is directed to pay the arrears of such salary within 15 days from the date of the receipt of the writ of this Court. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent.

(P.B.Majmudar,J)
(pathan)